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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,644	12/29/2003	Michael Scott Brunner	17,777	6906
23556 7590 02/22/2008 KIMBERLY-CLARK WORLDWIDE, INC. Catherine E. Wolf 401 NORTH LAKE STREET NEENAH, WI 54956				
EXAMINER				
NGUYEN, THUY-VI THI				
ART UNIT		PAPER NUMBER		
3629				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/748,644

**Applicant(s)**

BRUNNER ET AL.

**Examiner**

THUY-VI NGUYEN

**Art Unit**

3629

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/CS-100)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date 05-07-04: 01-19-05

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-15, 17, 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier (US 2003/0057026 A1) in view of Cappel (US 7,008,106 B2).**

Regarding to **claim 1**, Rademaker discloses a method for selling a perishable receiving premium container, the method comprising:

providing the container adjacent to a display of a perishable, wherein the container is adapted to be used by a consumer to place the perishable into the container [...providing the container (bag) at the grocery store; abstract; par. 0004; 0014; figures 1-2];

charging the consumer for the perishable [...customer purchase of selected merchandise (food) which imply the merchandise has to be charged; see par. 0014];

charging the consumer for the container [...the bags/container may be sold to customer at retail grocery store; see figure par. 0009; par. 0014 and figures 2-3].

However, Rademaker does not teach while Cappel discloses the indicia on the container [...price tag on the bag; col. 8, lines 1-5 and figures 5a-b].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by Poirier with the method of having a price tag on the container as taught by Cappel in order to make it easy for the consumer as well as the store personnel.

Regarding to **claim 2**, Poirier discloses wherein the perishable is of a type selected from the group consisting of produce, deli, fast food, quick-serve food, frozen food, baked goods, meat, fish, and floral [...merchandise (food) at grocery store; par. 0014 and figure 1].

Regarding to **claim 3**, Cappel discloses controlling an element with the premium container, wherein the element is temperature, airflow [...slider bag with zipper (22) to thermally fused; col. 6, lines 44-42 and figures 1-2].

Regarding to **claim 4**, Cappel discloses providing indicia related to the container indicative of a price of the container, wherein the indicia is selected a price tag [Fig.5a and 5b].

Regarding to **claim 5**, Cappel discloses the container being resealable [col.1, lines 15-17. figures 1-2].

Regarding to **claim 6**, Poirier discloses a plurality of the containers [...providing bags; figures 2-3].

Regarding to **claim 7**, Cappel disclose wherein the providing step includes providing the container on a wicket [...see figure 1-2].

Regarding to **claim 8**, Cappel discloses the container on a roll [...purchase package of slider bags/container; see col. 1, lines 37-40].

Regarding to **claim 9**, Cappel container in a box [...purchase package of slider bags/container; see col. 1, lines 37-40].

Regarding to **claim 10**, Cappel discloses the container is disposable [...plastic slider bags; col. 1, lines 59-60].

Regarding to **claim 11**, Cappel discloses allowing a consumer to place the perishable into the container and to seal the container [...open the slider bag; use a portion of the product and reclose the bag; see col. 1, lines 48-50].

Regarding to **claim 12**, Poirier discloses a method for offering a consumer a choice between disposable perishable- receiving containers, the method comprising:  
providing a premium container adjacent to a perishable [...providing container (selling bags that can be re-usable) at grocery store; par. 0004; par. 0014]

providing a standard container adjacent to the perishable [...providing container (bags which is previous used) at grocery store; par. 0005; par. 0014];

allowing the consumer to choose between the standard and premium containers [...allowing the consumer the choice of either using a previously used bag or using a bag from the store; see figure 2]; and

charging the consumer for the container chosen based on indicia on the container, wherein the charge for the premium container is greater than the charge for the standard container [...there may be a charge for using the bags that are from store;

and there's no charge for the bag that consumer has from previous purchase; par. 0009; par. 0014].

However, Poirier does not teach while Cappel discloses the indicia on the container [...price tag on the bag; col. 8, lines 1-5 and figures 5a-b].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by Poirier with the method of having a price tag on the container as taught by Cappel in order to make it easy for the consumer as well as the store personnel.

Regarding to **claim 13**, Cappel discloses the indicia is selected from the group consisting of a bar code, a chip, a smart tag, an electronically-based indicator, a magnetically-based indicator, a price tag, a produce-type number, a model number, a color, a container shape, and a SKU [...a price tag; col. 8, lines 1-5 and figures 5a-b].

Regarding to **claim 14**, Poirier disclose wherein the charge for the standard container is zero [...there's no charge for the bag that consumer has from previous purchase; par. 0009; par. 0014]. Further more, it's obvious that the plastic produce bags are usually provided (without charge) to hold the selected fruits and vegetables at the supermarkets or grocery store.

Regarding to **claim 15**, wherein the premium container has an element- control feature [...slider bag with zipper (22) to thermally fused; col. 6, lines 44-42 and figures 1-2].

Regarding to **claim 17**, Cappel disclose the premium container has a plurality of element-control features [...a plastic bag with re-closable zipper and the slider; abstract].

Regarding to **claim 18**, Poirier disclose a method for selling disposable perishable-receiving premium containers, the method comprising:

providing a first container adjacent to a first perishable, wherein the first container is adapted to be used by a consumer to place the first perishable into the first container, and wherein the first container has a first element-control feature [...providing container (selling bags that can be re-usable) at grocery store; par. 0004; par. 0014; figures 1-3]

providing a second container adjacent to a second perishable, wherein the second container is adapted to be used by the consumer to place the second perishable into the second container, and wherein the second container has a second element-control feature [...providing container (bags which is previous used ) at grocery store; par. 0005; par. 0014];

allowing the consumer to choose between the first and second containers [...allowing the consumer the choice of either using a previously used bag or using a bag from the store; see figure 2];

and charging the consumer for the container chosen based on the indicia on the container chosen [...the bags/container may be sold to customer at retail grocery store; see figure par. 0009; par. 0014 and figures2- 3].

However, Poirier does not teach while Cappel discloses the indicia on the container and the control element feature [...plastic bag with slider and re-closable zipper features; price tag on the bag; abstract; col. 8, lines 1-5 and figures 1, 2, 5a-b].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by Poirier with the method of having a price tag and the control element features on the container as taught by Cappel in order to make it easy for the consumer to use and also to protect the food from decay.

Regarding to **claim 20**, Cappel discloses wherein the first container has a plurality of element- control features [...a plastic bag with re-closable zipper and the slider; abstract].

Regarding to **claim 21**, Poirier discloses a method for producing a perishable-receiving premium container, the method comprising:

assembling the plurality of premium containers to facilitate dispensing to a consumer and/or a retail worker [...merchant provides customers with re-usable bags for transporting their purchase; abstract].

However, Poirier does not teach, while Cappel discloses:

manufacturing a plurality of premium containers, wherein each premium container includes an element-control feature and an indicia of the price of the container [...bag manufactures has been provided to the product manufactures or to the; col. 1, lines 37-44; line65-66 and figures 5a-b (price tag 56)];



Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of assembling the container to the consumers as taught by Poirier with the method of having a price tag on the container as taught by Cappel in order to make it easy for the consumer as well as the store personnel.

Regarding to **claim 22**, Cappel discloses the plurality of premium containers are disposable [...plastic slider bags; col. 1, lines 59-60].

**3. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cappel (US 7,008,106 B2) in view of Erlick et al. (US 2004/0066986).**

Regarding to **claim 23**, Cappel discloses a disposable perishable-receiving container comprising:

an element-control feature, wherein the element to be controlled is selected from the group consisting of humidity, temperature, physical impact, odor, microbes, liquid leakage, liquid, gas mix, airflow, excess oil, and light [...slider bag with zipper (22) to thermally fused; col. 6, lines 44-42 and figures 1-2];

a resealing device [...slider (32) and zipper (22); figure 1-2];

an indicia related to the container indicative of a price of the container [...price tag on the bag; col. 8, lines 1-5 and figures 5a-b].

However, Cappel does not teach while Erlick et al. discloses

wherein the indicia is selected from the group consisting of a chip, an electronically-based indicator, a magnetically-based indicator, a produce-type number, a

model number, a color, and a container shape [...for example: indicia (106 and 108) indicate the color red as open and color green as close; par. 0018, lines 25-31 and at least figure 1].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the system of the container having an element-control feature as taught by Cappel with the system of providing the instruction using that element control feature regarding to the indicia (color symbol) on the container as taught by Erlick in order to make it easy for the consumer to use and also to protect the food from decay.

**4. Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier (US 2003/0057026 A1) in view of Cappel (US 7,008,106 B2) and further in view of Erlick et al. (US 2004/0066986).**

Regarding to **claim 16**, Poirier/Cappel disclose the invention substantially as claimed as discussed above; However, Poirier/Cappel do not teach, while Erlick et al. disclose providing a consumer with information regarding the element-control feature of the premium container [...provide a user to easily discern whether the slider is in the "open bag" or the "seal bag position"; par. 0006; and at least figure 9].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging the container base on the indicia as taught by Poirier/Cappel with the method of providing the instruction regarding the element-control feature of the container as taught by Erlick

in order to make it easy for the consumer to use and also to protect the food from decay.

Regarding to **claim 19**, Poirier/Cappel disclose the invention substantially as claimed as discussed above; However, Poirier/Cappel do not teach, while Erlick et al. disclose providing the consumer with information regarding the first and second element-control features [...provide a user to easily discern whether the slider is in the "open bag" or the "seal bag position"; par. 0006; and at least figure 9].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging the container base on the indicia as taught by Poirier/Cappel with the method of providing the instruction regarding the element-control feature of the container as taught by Erlick in order to make it easy for the consumer to use and also to protect the food from decay.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
6. The US Patent to Jackson disclose a method for making a produce container and the US Patent publication to Stagnetto disclose a palletizable container for preserving and transporting agricultural or horticultural products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy-Vi Nguyen whose telephone number is 571-270-

1614. The examiner can normally be reached on Monday through Thursday from 8:30 A.M to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thuy-Vi Nguyen/

Examiner, Art Unit 3629